

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES SMITH,

Petitioner,

v.

04-CV-1026

GARY FILION, Superintendent,

Respondent.  
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THOMAS J. McAVOY  
United States District Judge

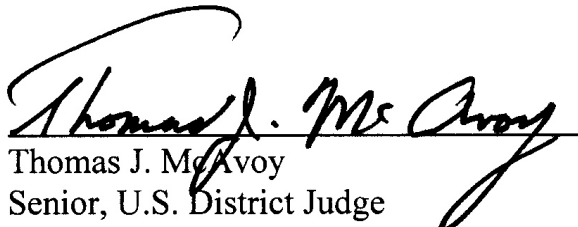
**DECISION and ORDER**

This matter brought pursuant to 28 U.S.C. § 2254 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

No objections to the October 17, 2006 Report-Recommendation have been raised. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein and DISMISSES the petition.

IT IS SO ORDERED.

Dated: January 26, 2007

  
Thomas J. McAvoy  
Senior, U.S. District Judge